

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 22 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0316-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
STEPHEN BISHOP,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR02292

Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

Stephen Bishop

Buckeye
In Propria Persona

H O W A R D, Chief Judge.

¶1 Following a jury trial, petitioner Stephen Bishop was convicted of five counts of armed robbery, nine counts of kidnapping, one count of aggravated assault and one count of theft. The trial court sentenced him to a combination of consecutive and concurrent prison terms. In a combined appeal and petition for review, we affirmed Bishop's convictions and sentences and denied relief on his petition for review of the trial court's denial of his first petition for post-conviction relief, filed pursuant to Rule 32,

Ariz. R. Crim. P. *State v. Bishop*, 137 Ariz. 5, 7-9, 667 P.2d 1331, 1333-35 (App. 1983). Bishop sought post-conviction relief again in 1984, and we denied relief on his petition for review of the court's denial of that petition in 1991. In 2010, almost thirty years after he was sentenced in 1981, Bishop filed a writ of habeas corpus, again challenging his sentences. The court properly treated that filing as a petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.3. The court then denied that petition and Bishop's motion to reinstate it, and this petition for review followed. We will not disturb the trial court's ruling absent a clear abuse of discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 Bishop claims the trial court erred by denying both his petition for post-conviction relief and his request to reinstate that petition. He also claims the court should have granted a continuance permitting him to reply to the state's response to his Rule 32 petition and should have appointed an attorney to represent him. To the extent Bishop's petition presented claims he either raised or could have raised on appeal or in prior post-conviction proceedings, they are precluded under Rule 32.2(a), Ariz. R. Crim. P. (precluding claims based on any ground finally adjudicated on merits on appeal or in any previous collateral proceeding, or waived at trial, on appeal, or in any previous collateral proceeding). In fact, Bishop not only previously challenged his sentences on appeal, *Bishop*, 137 Ariz. at 9, 667 P.2d at 1335, but, according to the trial court, he also challenged his sentences in a previous post-conviction petition. Moreover, Bishop did not file a notice of post-conviction relief setting forth the substance of any specific exception to preclusion and meritorious reasons why he did not raise his claim in a previous petition or in a timely manner, as Rule 32.2(b) requires. Therefore, nothing in the petition for review establishes that Rule 32.2(a) is inapplicable to Bishop's most

recent petition for post-conviction relief, or that he should be excused from the rule's preclusive effect.

¶3 Based on the record before us, we cannot say the trial court abused its discretion in denying Bishop's petition or his motion to reinstate it. The court denied relief in two detailed and thorough minute entry orders that clearly identified Bishop's arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court's ruling and see no need to reiterate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 In addition, to the extent Bishop complains the trial court improperly denied his request for counsel, we find no abuse of discretion. There is no constitutional right to an attorney in state post-conviction proceedings. *See State v. Mata*, 185 Ariz. 319, 336, 916 P.2d 1035, 1052 (1996).

¶5 Accordingly, we grant the petition for review but deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge